

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on March 23, 2001
at 3:40 P.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Bill Tash (R)
Sen. Ken Toole (D)

Members Excused: Sen. Mike Taylor (R)

Members Absent: None.

Staff Present: Melissa Rasmussen, Committee Secretary
Mary Vandebosch, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:	HB 495, 3/23/2001
	HB 543, 3/23/2001
	HB 340, 3/23/2001
Executive Action:	HB 444
	HB 332
	HB 340
	HB 159
	HB 513
Discussion:	HB 605

HEARING ON HB 495

Sponsor: REP. ALAN Olson, HD 8, Roundup

Proponents: Russ Ritter, MT Resources
Jim Mockler, MT Coal Council
Don Allen, WETA
Kim Kuzara, Self

Opening Statement by Sponsor:

REP. ALAN Olson, HD 8, Roundup, charged the basic intent of the bill is to allow coal mine permits the option of reverting back to the state, then allowing a company to take over the permit without having to go through the EIS and EA again. He offered the example of wanting to open the Bull Mountain Number One Mine again. He declared that the original permitting took approximately five years. He argued the mine will not reopen if they have to go through that process again.

Proponents' Testimony:

Russ Ritter, MT Resources, informed the committee that high energy costs equal mine closures. He charged that the bill would help some of these businesses get going again. He proclaimed the coal near Roundup is super compliant coal. He exclaimed he is in favor of speeding up the process, not curtailing reopening. A new EIS does not need to be conducted when transfer of ownership takes place.

Jim Mockler, MT Coal Council, proclaimed the bill is common sense. He stated there is no need to go through all of the same studies. He urged the committee to pass the bill.

Don Allen, WETA, declared that the bill would speed up the process without lowering the standards.

Kim Kuzara, Representing himself, informed the committee he has done environmental work for mines. He declared if a permit was revoked the state would have to continue with environmental monitoring. He gave examples of environmental monitoring ceasing without landowners knowing impacts. He argued that funding could come from the bonding of a permit. He urged the committee not to revoke the legislation if it conflicts with federal standards. He stated working with the federal government would help solve those issues.

Informational Testimony:

Guy Padgett, US Dept. of Interior Office of Surface Mining, commented on the bill and submitted written testimony **EXHIBIT (nas66a01)**.

CHAIRMAN BILL CRISMORE questioned if **Mr. Padgett's** testimony should be regarded as opposition to the bill. **Mr. Padgett** stated he would feel more comfortable if he was considered an information witness.

Questions from Committee Members and Responses:

SEN. MACK COLE inquired if **Mr. Padgett** had spoke of his concerns prior to the hearing. **REP. OLSON** said he had not. **SEN. COLE** wondered if there were other projects seeking a permit. **REP. OLSON** told him he only knew of Bull Mountain. **SEN. COLE** asked for comments about **Mr. Padgett's** testimony. **REP. OLSEN** requested that **Mr. Padgett** be categorized as an opponent. He stated the bill does not weaken state law. He expressed his support to strike federal land from the bill. He charged that many of the concerns can be fixed. **SEN. COLE** expressed his support for the bill and stressed the importance of clearing up concerns.

SEN. COLE asked if old wells are still being monitored. **Mr. Kuzara** charged that they do not exist, somebody filled the wells with bentonite. **SEN. COLE** questioned who put the wells in. **Mr. Kuzara** said numerous entities did the installations.

SEN. DALE MAHLUM questioned if the legislation was a common sense bill. He asked if the permit is issued and the operator cannot make the mine work, shouldn't the permit be transferred to someone who can. **REP. OLSON** stated that is the purpose of the bill.

SEN. KEN TOOLE (Senator Toole did not turn his mic on so the question could not be heard on the tape). **REP. OLSON** declared that the permit is pertaining to an underground mine. The permit was revoked in 1998 primarily because the company did not meet deadlines. **SEN. TOOLE** questioned if the mine had been closed since 1998. He asked if there was a new entity that wanted to reopen the mine **REP. OLSON** informed him that was correct, BMB, Inc.

{Tape : 1; Side : B}

SEN. TOOLE inquired if the Office of Surface Mining had been contacted in preparation for the bill. **REP. OLSON** stated his contacts had been with the EQC.

SEN. TOOLE questioned if the state had worked out an agreement in regards to permitting coal operations. **Mr. Mockler** informed him they had. **SEN. TOOLE** wondered if the bill would jeopardize that agreement. **Mr. Mockler** told him it would not. If it did he would ask for a contingency clause.

SEN. TOOLE questioned how long it would take the Office of Surface Mining to decide if Montana was in compliance. **Mr. Padgett** declared it would take approximately six months. **SEN. TOOLE** wondered if the agreements with the state would stay in effect until the issue of compliance was decided. **Mr. Padgett** said they only recognize those who have been approved.

Closing by Sponsor:

REP. OLSON expressed his understanding for concerns raised during the hearing. He argued that the concerns are in the verbiage, nothing is substantive. He charged that the bill does not make state law less stringent than federal law. He declared that the bill equals jobs and opportunity. The Bull Mountain Mine is a good example. He charged that the economy of his community is failing. He urged the committee to pass the bill.

HEARING ON HB 543

Sponsor: **REP. ROY BROWN, HD 14, Billings**

Proponents: **Peggy Trenk, MT Association of Relators**
Byron Roberts, MT Building Association
Linda Stoll, MT Association of Planners
Tim Davis, MT Smart Growth Coalition
Stuart Doggett, MT Manufactured Housing and RV
Association
Joe Mueller, Self
Don Allen, WETA

Opening Statement by Sponsor:

REP. ROY BROWN, HD 14, Billings, stated the bill would help to attract business to the state. He stressed, enhancing the quality of life through growth. The development of a growth plan tends to be contentious, but ultimately points people in a common direction. He pointed out the numerous lawsuits associated with this issue. He argued a growth plan is not meant to be a regulatory document. It does not offer the due process and equal protection. The bill will make it mandatory to use the growth process and keep it in line with the goals and objectives of the

policy. The bill has the support and agreement of many organizations around the state.

Proponents' Testimony:

Peggy Trenk, MT Association of Relators, informed the committee that her organization requested the legislation. They were concerned with the role of the growth policy. She charged that the growth policy establishes a vision for the community but does not provide a plan of action. She stated that in Billings there are subdivision regulations that do not comply with the rules. She stated that the language provides clarity. She claimed growth policies become living documents. She argued the policy would no longer get caught in the middle. She stressed the need for due process protection. She submitted a Growth Policy plan and a bill with proposed amendments **EXHIBIT (nas66a02)**.

Byron Roberts, MT Building Association, told the committee the problems builders encounter because subdivision regulations are unclear. He charged that the growth policy would establish community goals. The growth policy is not the implementation document. It is a policy guide that contains recommendations for community growth and development. The implementation of a plan or policy can only take place through zoning, subdivision or other enforceable use regulations.

Linda Stoll, MT Association of Planners, articulated their original discontent for the bill. She declared support for the bill with the proposed amendments. She stressed that a growth policy is a guide, not a regulatory document. She argued that the regulatory documents local governments use need to be consistent. Local governments lose cases because of the inner conflicts with regulatory documents.

Tim Davis, MT Smart Growth Coalition, spoke in favor of the bill as amended and submitted written testimony **EXHIBIT (nas66a03)**.

Stuart Doggett, MT Manufactured Housing and RV Association, expressed his support for the bill as amended. He charged that manufactured homes are an important part of state housing. He emphasized the importance of clarifying growth policies.

Joe Mueller, representing himself, charged that common ground would be good for business. He argued words are subjective; growth policies are a moving target.

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Don Allen, WETA, declared his support for appropriate planning in order to attract capital. A large number of WETA associations are concerned and affected by growth issues.

Questions from Committee Members and Responses:

SEN. LORENTS GROSFIELD wondered if local governments would not implement all required applicable provisions on every aspect of the growth policy, do they have to go back and amend out those sections. He further questioned how requiring a local government to establish enforceable provisions is different from making the growth policy enforceable. **Ms Trenk** told him that a policy is a guide, zoning laws have a process and are required to conform to the growth policy. It is important to establish regulations.

SEN. GROSFIELD questioned if the local government adopts the policy but they do not want to establish all of the requirements do they have to start over. **Ms Stoll** guessed that local governments would lose lawsuits if the language was different than the subdivision requirements. Local governments need to understand the process. **SEN. GROSFIELD** asked if the proposed language would make the growth policy more specific. **Ms Stoll** stated the intent is to make people think about what they say in the growth policy verses what is carried out in their subdivision laws. The intent is not to make the growth policy more specific.

Closing by Sponsor:

REP. BROWN declared the bill is not meant to be punitive. The bill ensures that rights are maintained when people engage in land use activities.

HEARING ON HB 340

Sponsor: REP. CINDY YOUNKIN, HD 28, Bozeman

Proponents: Mike Murphy, MT Water Resources Association
Gary Willis, MT Power Company
Byron Roberts, MT Building Association
Page Dringman, MT Association of Relators
John Bloomquist, MT Stockgrowers

Opening Statement by Sponsor:

REP. CINDY YOUNKIN, HD 28, Bozeman, stated the bill addresses water rights and easements in subdivisions. She gave an example of subdivisions in Bozeman where the subdivider never addressed the issue of water rights. The homeowners in those subdivisions have no way of accessing their water. She declared that if a subdivider creates a subdivision with lots of less than five acres they have three choices: the subdivider can reserve all of the water rights then transfer them to a single entity, if the property is subject to an irrigation district the subdivider would have to establish a landowners water use agreement administered through a single entity, or reserve and sever all of the surface water rights from the land. The subdivider has to apply through the DNRC. She pointed out the language on lines 28-30 that address the issue of a ditch running through the land. She offered amendments because of technical concerns with ditch easements not previously addressed **EXHIBIT (nas66a04)**. Page 3, lines 17-21 address utility easements.

Proponents' Testimony:

Mike Murphy, MWRA, told the committee that a potential subdivider needs to be aware of the specifics involved. He stated the bill would offer clarification of water rights in subdivisions.

Gary Willis, MPC, expressed his appreciation for the easement language. He charged that in many cases people were not aware of easement locations.

Byron Roberts, MT Building Association, stated the bill provides assurance not currently offered. It enables residence to jointly protect water rights.

Page Dringman, MT Association of Relators, declared it has been a complex problem trying to sort out water rights in a subdivision. She expressed her support for the ditch easement language.

John Bloomquist, MT Stockgrowers, charged that the bill is a good idea long overdue. The bill clarifies what the subdivider is required to do. He stated the easement language is a natural extension of previous legislation.

Informational Testimony:

Jack Stults, Division Administrator for Water Resources, declared the mechanisms in the bill are routine. The language clarifies a confusing area.

Questions from Committee Members and Responses:

SEN. GROSFIELD questioned the language on page 2, line 15. He was concerned that the language did not encompass the intention of the sponsor. **REP. YOUNKIN** declared that was not her intention. She stated she would not interpret the language that way. **SEN. GROSFIELD** read aloud, "by the owner of the land to be subdivided." He stated it is a glitch in the language. He looked at the option on line 22 and questioned why the language would not say, "reserve and sever some or all". **REP. YOUNKIN** told him if all of the water rights are not sold, it should still be reserved. **SEN. GROSFIELD** specified land that is not all subdivided. He offered the example of 100 acres with only 20 acres subdivided. **REP. YOUNKIN** stated it would not apply because the bill only addresses subdivisions of five acres or less. **SEN. GROSFIELD** clarified 20 acres divided into four five acre parcels. **REP. YOUNKIN** declared if it was not all reserved, it would have to be put into a single entity as on line 16.

{Tape : 2; Side : B}

Closing by Sponsor:

REP. YOUNKIN declared that a landowner cannot reserve water rights on land that is not going to be subdivided and sold. She encouraged the committee to adopt her suggested amendments.

EXECUTIVE ACTION ON HB 444

Motion/Vote: **SEN. GROSFIELD** moved that **HB 444 BE CONCURRED IN.**
Motion carried 5-1 with Cole voting no.

EXECUTIVE ACTION ON HB 332

Motion/Vote: **SEN. TOOLE** moved that **HB 332 BE CONCURRED IN.** **Motion carried 7-0.**

Discussion on HB 605

SEN. VICKI COCCHIARELLA asked the committee for feedback regarding HB 605. She informed the committee of the process she has gone through to make the people in Missoula talk and find common ground. She questioned the committee voting on the bill to fix a Missoula issue and upset what is happening in other air pollution districts.

SEN. MAHLUM questioned how far the board wanted to go with the situation.

SEN. TOOLE expressed his dislike for the bill.

SEN. GROSFIELD stated the bill is the result of a problem.

SEN. TOOLE was concerned with Missoula's status as a non-containment area being jeopardized. He argued that Helena is headed down the same path.

EXECUTIVE ACTION ON HB 340

Motion: **SEN. GROSFIELD** moved that **HB 340 BE CONCURRED IN.**

Motion/Vote: **SEN. GROSFIELD** moved that **AMENDMENTS HB034001.AMV** exhibit 4 **BE ADOPTED. Motion carried 7-0.**

Motion: **SEN. GROSFIELD** moved that **p.2, lines 15 & 22 AMENDMENTS BE ADOPTED.**

Discussion:

SEN. GROSFIELD stated the purpose of the amendment is to address the concerns if a landowner does not want to use all of the water rights. He stressed the importance of clarifying the intent of the language.

Mary Vandenbosch questioned if the language to page 2, line 15 should be changed.

Vote: Substitute motion carried 7-0.

Vote: **HB 340 WAS CONCURRED IN AS AMENDED. Motion carried 7-0.**

EXECUTIVE ACTION ON HB 159

Motion/Vote: **SEN. MAHLUM** moved that **HB 159 BE CONCURRED IN. Motion carried 7-0.**

EXECUTIVE ACTION ON HB 513

(The meeting was adjourned when **Ms Vandenbosch** discussed technical concerns with HB 513 **EXHIBIT(nas66a05)**. Therefore the recorder was off and much of the discussion was missed. **SEN. COCCHIARELLA** moved the bill and the recorder was turned back on.)

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Motion/Vote: SEN. COCCHIARELLA moved that **HB 513 BE TABLED.**
Motion carried 7-0.

The following testimonies were submitted at the end of the meeting.

Janet Ellis, MT Audubon, submitted written testimony in support of HB 543 as amended **EXHIBIT(nas66a06)**.

Marga Lincoln, Representing herself, submitted written testimony in favor of HB 543 **EXHIBIT(nas66a07)**.

ADJOURNMENT

Adjournment: 5:35 P.M.

SEN. WILLIAM CRISMORE, Chairman

MELISSA RASMUSSEN, Secretary

WC/MR

EXHIBIT (nas66aad)